

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 89602(b)

Final Modification:

Following the public hearing, the "Temporary Manager Candidate List Applicant Information" form is updated, in response to testimony, to reflect the amendment in Section 89667(a) which removes the qualification requirement listed in Section 89667(a)(12). Also, the revision to the form is updated to 11/18.

Section 89602(c)

Final Modification:

Following the public hearing, the "Temporary Manager Appointment Applicant Information" form is updated, in response to testimony, to reflect the amendment in Section 89667(a) which removes the qualification requirement listed in Section 89667(a)(12). Also, the revision to the form is updated to 11/18.

Section 89633(a)

Final Modification:

Following the public hearing, this section is amended, in response to testimony, to require the notice to include the number of nonambulatory residents, the number of bedridden residents unable to turn or reposition in bed, the number of residents on hospice, a list of deficiencies from inspection reports that have led to the need for a temporary manager and if the facility is in financial distress. This modification is necessary to provide temporary manager candidates with a more detailed picture of the circumstances of the facility so that they can make an informed decision as to whether to apply. This additional information is necessary for the temporary manager to complete the LIC 200TM form, which is required for the temporary manager to obtain a provisional license.

Section 89667(a)(12)

Final Modification:

Following the public hearing and in response to testimony, this section is repealed. The Department does not wish to discourage potential applicants from applying simply because they do not have a bachelor's degree. The Department does not

require an associate's or bachelor's degree for any specific position in an adult community care facility, Residential Care Facility for the Elderly or Residential Facility for the Chronically III. The remaining qualification requirements suffice for vetting a qualified temporary manager based on his or her education and experience.

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies. There are no state-mandated local costs in this order that require reimbursement under the laws of California. Implementation of the regulations only impact adult residential community care facilities or Residential Care Facilities for the Elderly with the applicable circumstances in Health and Safety Code section 1546.1(c) or 1569.481(c).

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS did not consider any other alternatives because the Legislature, through the above-mentioned bill, mandates the Department's oversight of temporary managers and no alternatives were proposed.

The CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulatory action, which was designed to impact only the facilities in which the applicable circumstances in Health and Safety Code section 1546.1(c) or 1569.481(c) exist. These regulations do not compel other licensees to take any action. The facilities of other licensees will not be eliminated or expanded, and new facilities will not be created.

i) Testimony and Response

These regulations were considered at the public hearing held on October 30, 2018, in Sacramento, California. Written testimony was received during the 45-day comment period. The comments received and the Department's responses to those comments follow.

Selena Coppi Hornback, Associate Director of Public Policy, California Assisted Living Association (CALA) submitted the following comments:

General Comment

1. The proposed regulations combine adult residential community care facilities and Residential Care Facilities for the Elderly (RCFEs) and have created a new Chapter within Division 6 of Title 22. Separating the two licensing categories and their regulations and placing them in their corresponding regulatory code sections is important to promote awareness and understanding of these new regulations and for the ease of the user. It becomes difficult for licensees and administrators to know the rules when they are outside of the regulations they are required to comply with. Combining the two sets a bad precedent.

CALA strongly urges the Department to separate the requirements into their respective code sections.

Response:

Thank you for this comment, however, the Department is not able to accept the recommendation. These regulations will remain as is in one chapter to support the ease of use and to provide clarity for the Department and public. These regulations will rarely be used, only in an emergency situation and by a very limited number of persons. Also, the regulations are largely procedural, primarily for the Department's Program staff and include guidelines for the contract. Creating two sets of regulation sections with the same content may cause internal and external confusion.

Section 89633(a)

2. Comment:

Proposed Regulation: The Department will send a notice to all temporary manager candidates alerting them of the need for a temporary manager that includes "the name of the facility, its location, the current occupancy of the facility, the estimated duration of the appointment and the deadline for reply."

CALA Comment: The factual basis for this regulation states that it "provides temporary manager candidates with information specific to the facility and the appointment details so that the candidates can make an informed decision on whether to respond to the notice." CALA strongly disagrees that the information required by the proposed regulation would afford enough information to give an accurate picture of the circumstances the troubled facility is facing. Further, the scant information the Department would provide does not allow a temporary manager to complete the Department's form LIC 200TM TEMPORARY MANAGER APPLICATION FOR PROVISIONAL LICENSE without providing the number of non-ambulatory residents (if any) and the number of bedridden residents unable to turn or reposition in bed (if any).

CALA urges the Department to include in the regulations that the notice contain a paragraph listing specific deficiencies or violations and other pertinent information that have led to the need for a temporary manager and the facility's financial situation, as well as the number of nonambulatory residents, if any, the number of bedridden residents unable to turn or reposition in bed, if any, the number of residents on hospice, if any, and other information that the temporary manager would need to make an informed decision.

Response:

Thank you for this comment. The Department is including in the regulations that the notice must contain a list of specific deficiencies from inspection reports that have led to the need for a temporary manager, if the facility is in financial distress, the number of nonambulatory residents, the number of bedridden residents unable to turn or reposition in bed and the number of residents on hospice. The Department agrees that this information supports a more accurate picture of the circumstances that the facility is facing. Due to the emergency circumstances that surround the need for a temporary manager, the Department may not have all the specific details readily available. However, as soon as more information becomes available, the Department makes every effort to be transparent and provide sufficient information to the temporary manager candidates so that they can make an informed decision on whether or not to respond to the notice. As required in Section 89637(a), once a temporary manager is appointed, the Department will work with the temporary manager to develop and maintain a facility improvement plan, which will provide more detailed information on the needs of the facility and residents.

Section 89667(a)(12)

3. Comment:

Proposed Regulation: If the temporary manager is an individual, he or she shall have an associate degree or bachelor's degree in fields related to social services, health, and/or business management.

CALA Comment: This proposed regulation sets a higher standard for a temporary manager than is required of a licensee or a certified administrator and potentially excludes qualified individuals who have a record of substantial compliance, or have a degree in a field outside of the three listed. A temporary manager is already required to be a current certified administrator or licensee or have a minimum of six months of experience as an administrator or licensee per 89667(a)(1)(A) and (B).

CALA strongly urges the Department to delete this additional educational requirement.

Response:

Thank you for this comment. The Department is removing this requirement from the regulations.

LIC 200TM TEMPORARY MANAGER APPLICATION FOR PROVISIONAL LICENSE

4. Comment:

CALA Comment: Based on the information that would be provided to a temporary manager in 89633(a), the temporary manager would not have sufficient information to complete "9b. Number Of Non-Ambulatory (If Any)" and "9c. Number Of Bedridden Unable To Turn Or Reposition In Bed (If Any)."

Response:

Thank you for this comment. The Department is amending Section 89633(a) to include this information in the notice so that a temporary manager has sufficient information to complete the form.

j) 15-Day Renotice Statement

Pursuant to Government Code section 11346.8, a 15-day renotice and complete text of modifications made to the regulations after the public hearing were made available to the public. The renotice period was from December 28, 2018, to January 14, 2019. There were no comments received as a result of the renotice and no further amendments have been made to the regulations.

k) Forms Incorporated by Reference

This rulemaking file includes three forms incorporated by reference, LIC 200TM, LIC 215TM, and LIC 216TM. These forms are not printed in the CCR because it would be cumbersome and impractical; however, these forms are readily available from the CDSS and CDSS' internet page, <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List>.

l) Forms in Section 89602

It is necessary that the forms included in Section 89602 be signed under penalty of perjury to impress upon the applicant that there is potential serious consequence for any intentional inaccuracy in the application.